



NATIONAL ASSOCIATION OF REALTORS®

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FEDERAL ELECTION
COMMISSION
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2005 FEB 22 P 3:17

February 15, 2005

Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Attn: Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration

RE: MUR 5577

Dear Mr. Jordan:

This letter is in response to yours dated February 2, 2005 and received by the National Association of REALTORS® ("NAR") on February 7, 2005. I enclose a Statement of Designation of Counsel designating me as counsel to NAR in this matter.

The complainant in this matter alleges that he received a flyer that "appears to me to advocate the candidacy of Richard Burr" and was "paid for by the National Association of REALTORS®." He also notes that he is not a member of NAR and asserts his contention that "any reasonable individual would consider the act of producing and distributing this flyer to be a political contribution to Mr. Burr." Enclosed with the complaint is a copy of the printed communication to which the complainant objects ("flyer.") For the reasons set forth below, the production and distribution of this flyer does not violate the Federal Election Campaign Act of 1971, as amended ("Act"), and NAR respectfully requests that the Commission and Commission staff determine that no action be taken against NAR in response to this complaint and dismiss this matter without further action.

The flyer included with the complaint is entitled "Richard Burr – Building a Stronger North Carolina . . . One Neighborhood at a Time." This flyer bears the identifying notice "Paid for by the National Association of REALTORS®." NAR paid all costs associated with the production and distribution of this flyer. Inspection of the text of the flyer readily reveals that it does not contain any words of express advocacy whatsoever of Mr. Burr's candidacy for election to the Senate. Absent such words of express advocacy, distribution of this flyer is not a contribution or expenditure under the relevant provisions of the Act¹, and is therefore not subject

¹ See, e.g., *Fed. Election Comm'n v. Christian Action Network, Inc.* 110 F.3d 1049 (4th Cir., 1997), *Virginia Society for Human Life, Inc. v. Fed. Election Comm'n*, 263 F. 3d 379 (4th Cir. 2001), and *Faucher v. Fed. Election Comm'n*, 928 F 2d 468 (1st Cir. 1991).

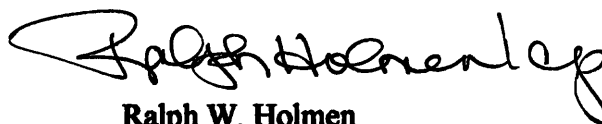
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to the prohibitions and limitations imposed by the Act on contributions or expenditures. Thus, NAR, an Illinois not-for-profit corporation, may bear the costs of producing and distributing the flyer without violating the Act.

The only possible exception to the conclusion above would be if this flyer could be deemed a "Coordinated Communication" as defined in §109.21 of the Commission's Regulations, since in such case §109.21 would deem NAR's expenditures to produce and distribute the flyer to be an in-kind contribution to the Burr campaign. However, neither the complaint by which this MUR was initiated nor the FEC's letter transmitting that complaint to NAR alleges that the flyer was coordinated in any way with the Burr campaign, or even suggests any facts inferring that NAR's production and distribution of the flyer might satisfy the "conduct standards" of §109.21(c). In fact, NAR carefully developed, produced and distributed the flyer in a manner that avoided the conduct described expressly in that subsection as well as conduct that might otherwise have caused or permitted the creation and distribution of the flyer to be any way coordinated with the Burr campaign. Thus, NAR's distribution of the flyer is not an unlawful in-kind contribution by a corporation under §§ 109.21(b) or 109.22.

For the foregoing reasons, I respectfully request on behalf of the National Association of REALTORS® that the Commission and Commission staff determine that no action be taken against NAR or RPAC in response to this complaint, and that it be dismissed without further action. I would be happy to discuss with you the information set forth above, or to provide any other information or material which will assist you to conclude that it should be dismissed. Please feel free to contact me at your convenience at 312/329-8375.

Very truly yours,



Ralph W. Holmen
Associate General Counsel

RWH/cp

Enclosures

cc: Laurene K. Janik, General Counsel
Walt Witek, Vice President, Government Affairs
Lisa Friday Scott, Senior Public Advocacy Representative, Government Affairs
Scott Reiter, RPAC Program Representative, Government Affairs



FEDERAL ELECTION COMMISSION

Office of General Counsel

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STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Witness
FAX (202) 219-3929

MUR: 5577

COUNSEL: Ralph W. Holmen

FIRM: National Association of REALTORS

ADDRESS: 430 N. Michigan Ave., Chicago, IL 60611

TELEPHONE - OFFICE: (312) 329-8375

FAX: (312) 329-8256

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

2-10-05
Date

Laurene K. Janik
Signature

General Counsel
Title

RESPONDENT/WITNESS NAME (PRINT): National Association of REALTORS
Laurene K. Janik

MAILING ADDRESS: 430 N. Michigan Avenue
Chicago, IL 60611

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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation